

the plastic traction member is secured to the insert during a molding process, and encases the insert with the exception of the engagement means, thereby holding the traction member captive on the insert; wherein the insert is made entirely from a synthetic plastic material having a greater hardness than the traction member.

2. (Amended) The cleat according to claim 1, wherein the insert includes:

a stem portion having a first end and a second end;

an engagement means at the first end of the stem portion for releasable engagement with a complementary engagement formation defined on an undersole of the article of footwear; and

a securing formation extending from the second end of the stem portion for securing the traction member to the insert.

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12. (Amended) A cleat for an article of footwear consisting entirely of plastic, the cleat comprising:

an insert and a plastic traction member, the insert and traction member constituting separate and distinct elements formed at distinct times in the manufacture process;

the insert being made from a synthetic plastic material including a stem portion with an engagement means at a first end of the stem portion for releasable engagement with a complementary engagement formation defined on an undersole of the article of footwear and a securing formation in the form of a flange extending orthogonally from the stem portion;

the traction member being secured to the insert and encasing the flange during a molding process; and

wherein the insert is made from a synthetic plastic material having a greater hardness than the traction member.

15. (Amended) A cleat for an article of footwear consisting entirely of plastic, the cleat consisting of an insert and a traction member, the insert and traction member constituting separate and distinct elements formed at distinct times in the manufacture process;

the insert consisting of a stem portion having a first end and a second end with an engagement means at the first end of the stem portion for releasable engagement with a complementary engagement formation defined on an undersole of the article of footwear; and

the traction member being made from plastic and encasing the second end of the insert therein during a molding process such that only the stem portion protrudes from the traction member; and

wherein the insert is made entirely from a synthetic plastic material having a greater hardness than the traction member.

Add new claim 16-20 as follows:

--16. The cleat according to claim 2, wherein the securing formation is a flange extending radially from the stem portion.

17. The cleat according to claim 16, wherein the flange includes a plurality of apertures extending therethrough.

18. The cleat according to claim 12, wherein the insert includes:  
a stem portion having a first end and a second end;  
an engagement means at the first end of the stem portion for releasable engagement with a complementary engagement formation defined on an undersole of the article of footwear; and  
a securing formation extending from the second end of the stem portion for securing the traction member to the insert.

19. The cleat according to claim 18, wherein the securing formation is a flange extending radially from the stem portion.

20. The cleat according to claim 19, wherein the flange includes a plurality of apertures extending therethrough. -

Cancel claims 10 and 11 without prejudice.

## REMARKS

Claims 1-5 and 12-20 are currently pending. Claims 1, 2, 12 and 15 have been amended. New claims 16-20 have been added. Claims 10 and 11 have been canceled. No new matter has been added. Reconsideration is respectfully requested.

With regard to the rejections based upon prior art, claims 1, 2, 5 and 12-15 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,327,797 to Deacon et al. (Deacon) in view of U.S. Patent No. 5,996,260 to MacNeill (MacNeill). Claim 4 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Deacon and MacNeill, and further in view of U.S. Patent No. 5,036,606 to Erich et al. (Erich). Claim 10 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Deacon in view of Erich. Finally, claim 11 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Deacon and Erich, and further in view of MacNeill. These rejections are respectfully traversed in view of the preceding amendments and the remarks which follow.

As amended, claim 1 now defines a cleat for an article of footwear consisting entirely of plastic. The cleat includes an insert and a plastic traction member. The insert and the traction member constitute separate and distinct elements formed at distinct times in the manufacture process. The insert is made entirely from a synthetic plastic material, wherein the insert has a stem portion with engagement means for releasable engagement with a complementary formation defined on an undersole of the article of footwear. The plastic traction member is secured to the insert during a molding process and encases the insert. In this way, the insert is held captive within the traction member. Finally, the insert is made from a synthetic plastic material having a greater hardness than the traction member.

In addressing claim 1, the Office Action contends that Deacon discloses each feature of the claimed invention with the exception of plastic members having different hardnesses or colors. In addressing this deficiency, the Office Action applies MacNeill as teaching that different plastics may be utilized in the manufacture of cleats for footwear. This assertion of obviousness is respectfully traversed in view of the preceding amendments, and the vast differences in the cleat disclosed by Deacon and the cleat disclosed by MacNeill.

In establishing the law governing obviousness-type rejections, the Supreme Court in *Graham v John Deere*, 383 U.S. 1, 148 USPQ 459 (1966), stated:

Under § 103, the scope and content of the prior art are to be determined; differences between the prior art and the claims at issue are to be ascertained; and the level of ordinary skill in the pertinent art resolved. Against this background, the obviousness or nonobviousness of the subject matter is determined. Such secondary considerations as commercial success, long felt but unsolved needs, failure of others, etc., might be utilized to give light to the circumstances surrounding the origin of the subject matter sought to be patented. As indicia of obviousness or nonobviousness, these inquiries may have relevancy. . . This is not to say, however, that there will not be difficulties in applying the nonobviousness test. What is obvious is not a question upon which there is likely to be uniformity of thought in every given factual context. The difficulties, however, are comparable to those encountered daily by the courts in such frames of reference as negligence and scienter, and should be amenable to a case-by-case development. We believe that strict observance of the requirements laid down here will result in that uniformity and definitiveness which Congress called for in the 1952 Act.

With the foregoing in mind, the U.S. Patent & Trademark Office has determined that a prima facie case of obviousness is established by meeting three basic criteria. First, the Examiner must show some suggestion or motivation to modify the reference or to combine reference teachings. Second, the Examiner must show a reasonable expectation of success in modifying the primary reference based upon the teachings of the prior art. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. Support for the proposed modification and the reasonable expectation of success must be found in the prior art.

MPEP 706.02(j). It has further been determined that "[w]here a reference is relied on to support a rejection, whether or not in a minor capacity, that reference should be positively included in the statement of the rejection." See *In re Hoch*, 428 F.2d 1341, 1342 n.3 166 USPQ 406, 407 n. 3 (CCPA 1970).

When studying Deacon in view of amended claim 1, it becomes clear that Deacon fails to disclose various limitations required in the amended claim. For example, Deacon fails to disclose or suggest a cleat in which the "insert and traction member constitute separate and distinct elements formed at distinct times in the manufacture process". While Deacon does suggest that "spike 10 may be manufactured from any suitable material or combination thereof, and it may easily be assembled from two or more separate pieces . . . [and] the threaded stud 13, explained below, may be manufactured from a metal material such as aluminum, while the remainder of the cleat may be made of a synthetic plastic material", Deacon provides no specific instructions as to how such a cleat would be manufactured and certainly does not disclose the utilization of an insert formed of a hard synthetic plastic material in combination with a traction member formed of a softer material.

It is Applicant's opinion that such a deficiency may not be overcome by applying the teachings of MacNeill, as the modification proposed in the Office Action would require the complete re-engineering of the cleat disclosed by Deacon. As such, it is Applicant's opinion that the proposed modification based upon the teachings of MacNeill runs contrary to the MPEP's guidelines that the Examiner must show a reasonable expectation of success in modifying the primary reference based upon the teachings of the prior art.

In fact, neither MacNeill nor Deacon disclose or suggest an insert which may be formed entirely of plastic. Rather, both Deacon and MacNeill suggest the utilization of metal materials in

the formation of the threaded stud 13 (see Deacon) and the use of metal in the support structure 24 (see MacNeill).

In addition to the prior art's failure to disclose and suggest the obviousness of the claimed invention, neither Deacon nor MacNeill disclose or suggest a cleat having a synthetic plastic insert which is encased within a plastic traction member. Specifically, the cleat explicitly disclosed by Deacon is a one-piece spike manufactured through a single molding process. As such, the threaded stud 13 and flange 12 are bound together, but do not encase each other. The encasement of one element within another element would require that the components be separate and distinct, and not the single unitary member disclosed and contemplated by Deacon.

However, and as the Office Action points out, Deacon does suggest a two-piece golf spike, but Deacon provides no explanation as to how such a spike would be manufactured. As such, any suggestion that it would be similar to the cleat disclosed and claimed in accordance with the present invention is neither supported by the disclosure of Deacon nor the cited prior art.

With regard to MacNeill, MacNeill does disclose a support structure 24 encased within a base 21. However, the structure disclosed by MacNeill is very different from the structure disclosed and claimed in accordance with the present invention. First, the support structure 24, which Applicant presumes is meant to read upon the stem portion with engagement means, is not manufactured from a synthetic plastic material which is harder than the material of the traction member. Rather, the base 21, in which the support structure 24 is encased, is a plastic material which has a greater hardness than the traction member while the support structure 24 itself is metal. The construction disclosed by MacNeill is entirely different from that claimed in accordance with the present invention and there is no suggestion for modifying Deacon based upon the disclosure of MacNeill so as to read upon the pending claims.

In fact, and in contrast to all of the prior art cited during the prosecution of the above-referenced application, Applicant has been able to eliminate the metal stem disclosed and suggested in the prior art (including the metal stems disclosed and claimed by both Deacon and MacNeill) by utilizing an insert manufactured from a hard synthetic plastic having a greater hardness than the traction member. In practice, this is achieved by providing a plastic having a hardness between 75 MPa and 85 MPa to permit the insert to function as an undersole engagement means, but also allow bonding to occur between it and the softer plastic traction member.

In view of the reasons presented above, it is Applicant's opinion that the prior art neither discloses nor suggests the cleat defined in amended claim 1. As such, Applicant respectfully requests that the outstanding rejection be withdrawn.

With regard to those claims dependent upon independent claim 1, they are believed to overcome the prior art of record for the reasons presented above with regard to independent claim 1. As such, Applicant respectfully requests that the rejection relating to these claims be withdrawn.

Further, and with regard to dependent claim 2, Applicant has defined a cleat which further includes an insert having a stem portion with a first end and a second end. The insert also includes an engagement means at the first end of the stem portion for releasable engagement with a complementary engagement formation defined on an undersole of the article of footwear. The insert also includes a securing formation extending from the second of the stem portion for securing the traction member to the insert.

As mentioned above, the insert is made entirely from a synthetic plastic material. With this in mind, neither Deacon nor MacNeill disclose an insert as claimed. Specifically, Deacon fails to disclose an insert distinct from the traction member, wherein the insert has a securing formation extending from the second end of the stem portion for securing the traction member to the insert.

Rather, Deacon discloses a unitary spike wherein the threaded stud is unitarily formed with the convex flange.

With regard to the disclosure of MacNeill, MacNeill discloses a plastic cleat, but fails to disclose an engagement means constructed of plastic. Rather, the engagement means disclosed by MacNeill is formed of metal as the traditional teachings relating to the manufacture of golf cleats dictates. With this in mind, neither MacNeill nor Deacon, nor the other prior art cited, disclose or suggest an insert as claimed in accordance with amended claim 2.

With this in mind, and further to the reasons presented above with regard to claim 1, it is Applicant's opinion that new claim 2 overcomes the prior art of record.

Further, and with regard to claim 16, Applicant has defined a cleat wherein the securing formation is a flange extending radially from the stem portion. Certainly, Deacon does not disclose a flange extending from the stem portion. This would be impossible as Deacon discloses a unitary golf cleat. With regard to MacNeill, MacNeill once again does not disclose an engagement means formed of a synthetic plastic material. With this in mind, and further to the reasons presented above with regard to claims 1 and 2, it is Applicant's opinion that new claim 16 overcomes the prior art of record.

Finally, and with reference to claim 17, a cleat is claimed which includes a flange having a plurality of apertures extending therethrough. These apertures permit and facilitate the secure encasement of the stem portion within the traction member. Neither MacNeill nor Deacon disclose such apertures, as such apertures would not be required in conjunction with their constructions. With this in mind, and further to the reasons presented above with regard to claims 1, 2 and 16, it is Applicant's opinion that new claim 17 overcomes the prior art of record.

Amended independent claims 12 and 15 include limitations similar to those set forth in amended claim 1. As such, these claims are believed to overcome the prior art of record for the reasons discussed above with regard to independent claim 1. As to the claims dependent upon independent claims 12 and 15, they are also believed to overcome the prior art of record for the reasons discussed above.

In view of the amended claims, it is Applicant's opinion that the prior art fails to show or teach the structure as now claimed, individually or in combination. Therefore, it is respectfully requested that all of the outstanding rejections be withdrawn.

Attached hereto is a marked up version of the changes made to the specification and claims by the current amendment. The attached page is captioned "Version With Markings To Show Changes Made".

It is believed that this case is in condition for allowance and reconsideration thereof and early issuance is respectfully requested. If it is felt that an interview would expedite prosecution of this application, please do not hesitate to contact applicants' representative at the below number.

Respectfully submitted,



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